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Subject: Compliance Issues with WVDEP Construction Stormwater Permit #WVR108876 - Urgent Request
Attachments: 08.13.2019 DEP Permit WVR108876.pdf

Dear Acting Director Emery-Fultineer,

I want to call your attention to the West Virginia Department of Environmental Protection (WVDEP) Stormwater Permit **#WVR108876**, currently under review for reissuance by the Division of Waste and Water Management (DWWM). We contest Rockwool's permit re-issuance on two grounds:

1. The proposed new Limits of Disturbance (LOD) involve removing land once approved as within the LOD, but now said to have never been touched, then adding new acreage of land to be disturbed, such that the LOD limit stays just barely under the 100 acre limit; we believe Rockwool is pursuing this modification of the LOD in order to avoid triggering a public review. **We have evidence that the site's LOD is more than 100 acres.** As the disturbed areas now exceed 100 acres, the permit is no longer eligible for reissuance in the absence of a mandatory public comment and review process.

ACTION: The DWWM must confirm the actual Limits of Disturbance (LOD) with a site visit and inspection of the Rockwool construction site. An inspection by WVDEP will reveal what we know to be true, that Rockwool is disturbing more than 100 acres, and as such, the re-issuance process must take place with public review.

2. The timeline of site grading construction exceeds the regulatory limit of 1 year. This also triggers the required public review--a fact noted by the DWWM permit reviewer who on 7/19/2019 wrote: "Revise relative time of construction activities to include construction of proposed bioretention area. Check the box **Yes** since the grading phase of construction will last for longer than 1 year. The project will be sent out to public notice. If yes, you must fill out the Statement For Billing Form." Rockwool has filled out the form but refused to sign and notarize. Again, they are attempting to evade the required public review.

ACTION: The DWWM must not re-issue this permit without requiring Rockwool to sign and notarize the Statement for Billing Form, so the newspaper public notice can be posted and the 30 day review period commence.

Details:

Construction at the Rockwool site began in November 2017 and has disturbed more than 100 acres; this exceeds both the time limit (one year) for continued grading activities and the Limits of Disturbance (LOD) specified in the original permit (98.9 acres). The increase in disturbed area was not reported to DEP in the re-issuance process; this raises red flags that the permit should not be reissued without the necessary public comment period and allowance for a public hearing. One especially egregious example of Rockwool's LOD manipulation is the removal of a portion of Granny Smith Road from the LOD, with a claim that this area had never been disturbed, when in fact, the road was re-graveled in April 2019 and subject to considerable disturbance when the natural gas line utility was installed within the LOD.

Permit guidelines specifically state that, *"Disturbed area" is the total area of land-disturbing activity that will take place during all phases of a construction project, including, but not limited to, all waste and borrow sites, utility installation, road building, mass grading, and site development.* Rockwool failed to identify the JUI water line installation which crossed Rockwool site areas marked as outside the LOD, as well as the Mountaineer natural gas line that preceded both within what DEP previously accepted as Rockwool's LOD (Granny Smith Lane and now discounted by Rockwool) and then along the site's western property line (thus increasing Rockwool's LOD significantly).

Moreover, the build-out of Northport Avenue, which is contiguous to the Rockwool site and is being built specifically to provide access to the Rockwool factory certainly constitutes a "Common plan of development"--a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The "plan" is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot. That specific plot is the entirety of the Jefferson Orchards Industrial Park, a site much larger than 100 acres.

Conclusion:

We insist that this permit accurately report the LOD and follow the protocols necessitated by a construction site of over 100 acres. This is a simple issue of properly acknowledging the true size of this project with an inspection and following WVDEP's own procedures for permitting a construction site. In addition, any effort to allow Rockwool to continue grading beyond the one year limit without a public review process violates the Clean Water Act's clear instructions to not allow state-issued NPDES permits to be less protective than federally-issued permits.

Therefore, please carry out the following actions:

1. Halt the permit re-issuance process until an on-site inspection can be made.
2. Have WVDEP personnel visit the site and inspect Rockwool's proposed LOD to confirm that it is, in fact, more than 100 acres.
3. Require that Rockwool sign and notarize the Statement of Billing form to commence the 30 day review period.
4. Require permit reissuance to proceed under the mandatory 30 day public comment period and review process, including the possible need for a public hearing.

Thank you for your consideration and we look forward to hearing how the WVDEP DWWWM plans to proceed with this permit.

Sincerely,

Rural Agricultural Defenders

Jennifer King, Chair
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